

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

GEOFFREY J. CHARLTON AGENT
FOR BIRGITTA H. CHARLTON,

Plaintiff,

-versus-

STATE FARM INSURANCE CO.,

Defendant.

CIVIL ACTION FILE
NO. 09-1-3830-28

ANSWER AND DEFENSES OF STATE FARM FIRE AND CASUALTY COMPANY

COMES NOW, STATE FARM FIRE AND CASUALTY COMPANY (hereinafter "State Farm"), improperly named as State Farm Insurance Co., Defendant in the above styled action, and hereby responds to Plaintiff's Complaint, showing this Court as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

Named Defendant State Farm Insurance Co. is an improperly named party to this action. State Farm Fire and Casualty Company issued the policy which is the subject of Plaintiff's Complaint.

THIRD DEFENSE

Plaintiff's Complaint against State Farm should be dismissed pursuant to O.C.G.A. § 9-11-12(b)(5), as service of process by plaintiff of its complaint against State Farm was

insufficient. Namely, plaintiff failed to effect proper personal service upon the registered agent for State Farm. State Farm agent Mai Doa, upon whom plaintiff improperly served its complaint against State Farm, is not the registered agent for State Farm and is not authorized to accept service on behalf of State Farm. By filing this answer to plaintiff's complaint, State Farm in no way waives, or intends to waive, its defense that service of plaintiff's Complaint was improper and insufficient.

FOURTH DEFENSE

The duties and obligations of Defendant with respect to events giving rise to this litigation are governed by the terms of the policy issued by State Farm to its insured and by state law. State Farm has not breached any contractual or common law duties or obligations owed to Geoffrey Charlton or Birgitta Charlton.

FIFTH DEFENSE

Plaintiff's claims are barred because the State Farm policy under which Plaintiff seeks damages, Policy No.11-P8-6590-0, was not in effect at the time of the incident as alleged in the Complaint, said policy having been cancelled prior to the incident for the named insured's failure to make payment on the policy.

SIXTH DEFENSE

Plaintiff's claims are barred because even if the State Farm policy was in effect at the time of the incident, which State Farm expressly denies, the alleged named insured did not satisfy all conditions precedent to coverage under the policy with State Farm before bringing this lawsuit, and thus no coverage is forthcoming under the subject State Farm insurance policy in this action.

SEVENTH DEFENSE

Plaintiff's complaint fails to state a claim for alleged punitive damages upon which relief may be granted. Specifically, punitive damages are not recoverable by an insured for a cause of action based upon an alleged breach of an insurance contract, because the exclusive remedy for such extra-contractual damages lies with Georgia's bad faith statute, O.C.G.A. § 33-4-6.

EIGHTH DEFENSE

Plaintiff cannot recover the amount claimed as damages in the complaint because such damages are remote, speculative, and grossly exaggerated and inflated.

NINTH DEFENSE

Birgitta Charlton has no insurable interest in the damaged property and therefore cannot recover under the terms of the State Farm Policy and applicable Georgia law.

TENTH DEFENSE

Birgitta Charlton had no contractual relationship with State Farm at the time of the loss.

ELEVENTH DEFENSE

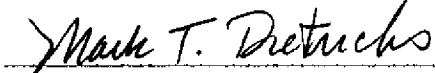
In response to the allegations contained in Plaintiff's Complaint, Defendant State Farm denies each allegation contained in the Complaint.

WHEREFORE, Defendant State Farm prays that it be discharged without liability, that all costs be cast upon the Plaintiff, and that the Court enter such other and further relief as it deems just and proper.

Respectfully submitted, this 11th day of December, 2009.

Respectfully submitted,

SWIFT, CURRIE, MCGHEE & HIERS, LLP



Mark T. Dietrichs

Georgia State Bar No. 221722



Brooke N. Williams

Georgia State Bar No. 141614

Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **ANSWER AND DEFENSES OF STATE FARM FIRE AND CASUALTY COMPANY** upon the Plaintiff to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Mr. Geoffrey J. Charlton
Agent for Ms. Birgitta H. Charlton
2963 Christophers Court
Marietta, GA 30062

This 10th day of December, 2009.

SWIFT, CURRIE, McGHEE & HIERS, LLP

Brooke N Williams

Brooke N. Williams

Georgia State Bar No. 141614

Attorney for Defendant

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